IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1678 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANTIBHAI CHIMANBHAI MAKWANA - Petitioner(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR MTM HAKIM for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
MR DIPEN DESAI, ASST. GOVERNMENT PLEADER for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/01/2007

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed

for an appropriate writ, direction and/or order directing the respondents to give appointment to the petitioner on compassionate ground on any Class – III and Class – IV posts. By way of amendment, the petitioner has challenged the order/communication dated 6/8.9.1995 rejecting the petitioner's request for an appointment on compassionate ground.

2. It is the contention on behalf of the petitioner that the father of the petitioner was serving in the Government Department and he expired on 18.6.1990 leaving behind his family in distress condition. It is submitted that the family received an amount of Rs.41,910/- by way of gratuity and an amount of Rs.32,265/- by way of group insurance. They were also getting the pension, which was at the relevant time, Rs.635/- plus permissible D.A. It is the contention on behalf of the petitioner that the petitioner made an application to the concerned authority in the month of January – 1994 for an appointment on compassionate ground and the

petitioner received the communication – Annexure – B by which, the petitioner was directed to furnish certain information. It is further submitted that inspite of the above and inspite of the fact that the father of the petitioner died as far back as on 18.6.1990, the petitioner was not appointed on any Class – III or Class – IV posts on compassionate ground and therefore, the petitioner has preferred the present special civil application.

3. It appears that during the pendency of the present special civil application by impugned communication, the petitioner was informed that the case of the petitioner will not fall within the income criteria and therefore, the application was rejected.

4. The learned advocate appearing for the petitioner has vehemently submitted that the respondents ought not to have consider the amount of family pension and other retiremental dues available and therefore, it is requested to

allow the present special civil application.

5. Shri Dipen Desai, learned AGP has opposed the present special civil application and while relying upon the recent judgment of the Hon'ble Supreme Court in case of ***State of J & K & Others V/s. Sajad Ahmed Mir*** reported in **(2006) 5 SCC 766**, it is requested that after the death of the father of the petitioner, 16 years have already passed and when the family survived inspite of the death of the employee, no order of appointment of the petitioner on compassionate ground is required to be passed after the period of 16 years and it is requested to dismiss the present special civil application.

6. Heard the learned advocates appearing on behalf of the parties.

7. It is not in dispute that the father of the petitioner has expired in the year 1990. For the first time, the petitioner made an application for the appointment on compassionate ground in

the year 1993/1994 and the petitioner preferred the present special civil application in the year 1997. Today, when the matter is called out, it is after a period of 16 years. As observed by the Hon'ble Supreme Court in case of ***Sajad Ahmed Mir*** (supra), the compassionate appointment is exception to the general rule and normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. It is also further observed by the Hon'ble Supreme Court that this general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. It is also further observed by the Hon'ble Supreme Court that once it is proved that inspite of the death of the breadwinner, the family survived and substantial period is

over, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14. In the case before the Hon'ble Supreme Court, the learned Single Judge dismissed the petition on the ground of delay and laches. The Division Bench set aside the said order and passed an order of appointment on compassionate ground. The Hon'ble Supreme Court set aside the order passed by the Division Bench and has observed as above. Considering the judgment of the Hon'ble Supreme Court in case of ***Sajad Ahmed Mir*** (supra) and the facts of the present case that more than 16 years have been passed and the family is surviving for all these 16 years. As observed by the Hon'ble Supreme Court, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to petitioner at the cost of the interests of several others ignoring the mandate of Article 14.

8. For the reasons stated above, the petition

fails. Rule is discharged. No costs.

[M.R.Shah, J.]

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